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TERESA LANDUCCI

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

TERESA LANDUCCI, on behalf of herself
and others similarly situated,

Plaintiff,

v.

FREEMAN EXPOSITIONS, LLC and DOES
1 to 100, inclusive,

Defendants.

Case No. 3:19-cv-07573-JCS

CLASS AND COLLECTIVE ACTION

**~~[REVISED PROPOSED]~~ ORDER
GRANTING
PRELIMINARY APPROVAL OF
SETTLEMENT**

GRANTED AS MODIFIED

Date: February 4, 2022
Time: 9:30 a.m.
Courtroom: Courtroom F – 15th Floor
Judge: Chief Magistrate Judge
Joseph C. Spero

**Final Approval Hearing: Aug. 26, 2022
Time: 9:30 a.m.
Via Zoom Webinar**

[PROPOSED] ORDER

On November 18, 2019, Plaintiff initiated this putative class action by filing a lawsuit in United States District Court, Northern District of California. See Dkt. # 1 (“Compl.”). Plaintiff brought claims against Defendant. See *id.* On November 2, 2020, Plaintiff filed the operative Second Amended Complaint (“SAC”) bringing claims for: (1) unlawfully withheld wages resulting from the check cashing fees in violation of California Labor Code § 212; (2) resulting Waiting Time Penalties; and (3) unfair business practices in violation of the Unfair

1 Competition Law, Bus. and Profs. Code §§ 17200, *et seq.* (“UCL”). Plaintiff also asserts a
 2 claim for PAGA Penalties on behalf of the LWDA for violations of Labor Code § 212. The
 3 remaining causes of action were asserted on an individual basis by Plaintiff and have been
 4 resolved. (Dtk. # 46)¹. On September 1, 2020, Defendant denied Plaintiff’s allegations and
 5 asserted numerous affirmative defenses. See Dkt. # 47.

6 Following an extensive investigation and arms’ length and good faith negotiations
 7 during a day long mediation with mediator Deborah Saxe, Esq. on June 22, 2021 and
 8 subsequent negotiations during the months thereafter, Plaintiff and Defendant (collectively
 9 “the Parties”) ultimately agreed to a tentative settlement agreement in principle to resolve the
 10 Class and PAGA claims. Following further confirmatory discovery with third party Bank of
 11 America (“BofA”). The Parties subsequently signed a long form Settlement Agreement (as
 12 amended) which has been filed with this Court.

13 Plaintiff moves for this Court to:

- 14 1. Preliminarily approve the Class Action and PAGA Settlement for \$500,000;
- 15 2. Preliminarily and conditionally certify the class for purposes of settlement;
- 16 3. Preliminarily appoint Plaintiff Teresa Landucci as class representative for purposes
 17 of settlement;
- 18 4. Preliminarily appoint Hoyer & Hicks as class counsel for purposes of settlement;
- 19 5. Approve as to form and content the Proposed Notice Packet;
- 20 6. Direct that the Notice Packet be mailed to the Settlement Class Members; and
- 21 7. Schedule a fairness hearing on the question of whether the proposed settlement
 22 should be finally approved as fair, reasonable, and adequate as to the members
 23 of the Settlement Class.

24
 25
 26
 27 ¹ Plaintiff also asserted individual claims of sex discrimination, sexual harassment, and retaliation in violation of
 28 the Fair Employment and Housing Act and Labor Code § 1102.5. The individual claims were the subject of a
 separate settlement agreement reached after the Parties agreed in principle to resolve the Class and PAGA
 claims.

1 Plaintiff's preliminary approval motion came on regularly for hearing before this Court
2 on February 4, 2022. The Court ordered the Parties to make certain modifications to the
3 Settlement papers.

4 The Court, having received and fully considered Plaintiff's notices, motion and
5 memorandum of points and authorities, the Settlement (as amended), the proposed
6 Settlement Documents, which include the revised Notices of Class Action Settlement, and
7 the oral argument presented to the Court, and in recognition of the Court's duty to make a
8 preliminary determination as to the reasonableness of any proposed class-action settlement
9 and to conduct a fairness hearing as to the good faith, fairness, adequacy and
10 reasonableness of any proposed settlement, HEREBY ORDERS and MAKES
11 DETERMINATIONS as follows:

12 1. All defined terms contained herein shall have the same meaning as set forth in
13 the Amended Joint Stipulation of Class and Representative Action Settlement (hereinafter
14 "Stipulation" or "Settlement") executed by the Parties and filed with this Court.

15 2. The Court finds that certification of the following class for purposes of
16 settlement is appropriate: All individuals who were employed by Freeman in California as
17 non-exempt/hourly employees and who received paper paychecks from Freeman and
18 against whom Bank of America assessed a non-customer check cashing fee when cashing
19 at least one such paper paycheck at any time between November 18, 2015 and the date of
20 Preliminary Approval of this Settlement Agreement by the Court.

21 3. The Court appoints Plaintiff Teresa Landucci as class representative for the
22 purposes of settlement.

23 4. The Court appoints Hoyer & Hicks as class counsel for the purposes of
24 settlement.

25 5. Federal Rule of Civil Procedure (23(e) requires court approval of a class action
26 settlement. Approval is a two-step process under Rule 23(e). "[T]he Court first determines
27 whether a proposed class action settlement deserves preliminary approval and then, after
28 notice is given to class members, whether final approval is warranted." *Noll v. eBay, Inc.*,

1 309 F.R.D. 593, 602 (N.D. Cal. 2015)(internal citations omitted); see also Manual for
2 Complex Litigation (Fourth) § 21.632 (courts “must make a preliminary determination on the
3 fairness, reasonableness, and adequacy of the settlement terms and must direct the
4 preparation of notice of the certification, proposed settlement, and date of the final fairness
5 hearing.”).

6 Preliminary approval of a settlement is appropriate when the settlement: (1) falls within
7 the range of possible approval; (2) appears to be the product of serious, informed, non-
8 collusive negotiations; (3) does not improperly grant preferential treatment to class
9 representatives or segments of the class; and (4) has no obvious deficiencies. In re
10 Tableware Antitrust Litig., 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007). “Closer scrutiny is
11 reserved for the final approval hearing.” *Harris v. Vector Mktg. Corp.*, No. C-08-5198 EMC,
12 2011 U.S. Dist. LEXIS 48878, at *24 (N.D. Cal. Apr. 29, 2011).

13 6. The Court has reviewed the Settlement and proposed Notice Packet, which
14 were separately lodged and are incorporated herein by reference. The Court finds on a
15 preliminary basis that the Settlement appears to be within the range of reasonableness of a
16 settlement which could ultimately be given final approval by this Court. It appears to the Court
17 on a preliminary basis that the settlement amount is fair and reasonable to all potential class
18 members when balanced against the probable outcome of further litigation relating to liability
19 and damages issues. Plaintiff has asserted violations of California labor and unfair
20 competition laws. Defendant agrees to a class settlement in the interest of compromising
21 and resolving the Class Action. The Parties recognize the risk involved in prosecuting and
22 defending the Class Action including significant delay, defenses asserted by Defendant, and
23 further potential appellate issues.


24 7. It further appears that the proposed Settlement has been reached as the result
25 of intensive, serious and non-collusive arm’s-length negotiations. It further appears that
26 extensive investigation and research has been conducted such that counsel for the Parties
27 at this time are able to reasonably evaluate their respective positions. Class Counsel have
28 significant experience in wage and hour class actions. The proposed Settlement was reached

1 through extensive negotiations and with the involvement of an experienced mediator,
2 Deborah Saxe.

3 8. It further appears that the proposed Settlement does not improperly grant
4 preferential treatment to the class representative and has no obvious deficiencies.

5 9. In connection with its preliminary approval of the Settlement, the Court appoints
6 Simpluris, Inc. of Santa Ana, CA, to act as the Settlement Administrator who will administer
7 the Settlement according to the terms of the Stipulation, as approved by this Court.

8 **APPROVAL OF DISTRIBUTION OF THE NOTICE OF THE SETTLEMENT**

9 10. Rule 23(e) provides that a court “must direct notice in a reasonable manner to
10 all class members who would be bound by” a proposed class action settlement. Fed. R. Civ.
11 Pro. 23(e)(1). This Court finds the proposed Notice Packet, ~~which is attached hereto as~~
12 ~~Exhibits~~ , fairly and adequately advises the potential class members of the terms of the
13 proposed Settlement, as well as the right of class members to opt out of the class, to file
14 documentation in objection to the proposed Settlement, and to appear at the Final Approval
15 Hearing to be conducted at the date set forth below. The Court further finds that the Notice
16 Packet and proposed distribution of such notice by first-class mail to each identified class
17 member at his or her last known address comports with all constitutional requirements,
18 including those of due process. **The parties shall add the date and time of
the final approval hearing to the notice.**

19 11. Accordingly and good cause appearing, the Court hereby approves the
20 proposed Notice Packet and orders the Settlement Administrator to distribute the Notice
21 Packet in the manner and pursuant to the procedures described in the Settlement.

22 12. If more than ten percent (10%) of the Settlement Class submits timely and valid
23 requests for exclusion pursuant to the terms and procedures of the Settlement, this entire
24 Settlement shall become voidable and unenforceable as to Plaintiff and Defendant, at
25 Defendant’s sole discretion. Defendant may exercise such option by giving notice, in writing,
26 to Class Counsel and to the Court not more than seventeen (17) days following the Response
27 Deadline.
28

1 13. The Parties have proposed and the Court hereby appoints as *cy pres*
2 beneficiary of any uncashed funds, The Impact Fund.

3 **FINAL APPROVAL/FAIRNESS HEARING AND SCHEDULE**

4 14. The Court hereby grants the Plaintiff's motion to set a fairness hearing for final
5 approval of the Settlement ("Final Approval/Fairness Hearing") and orders the following
6 schedule of dates for further proceedings:

- 7 a. Mailing of Notice Packet to the class shall be completed on or before
8 **May 11, 2022**;
- 9 b. Posting of Plaintiff's Motion for Attorney's Fees and Costs on the Settlement
10 Administrator's website and **filing that motion in the Court's ECF Docket**,
11 35 days prior to the Response Deadline; and
- 12 c. The deadline for class members to file and submit written objections and
13 requests for exclusion shall be **July 11, 2022** (60 Days After Mailing Date).

14 15. The Final Approval/Fairness Hearing will be held on **Aug. 26, 2022**, at 9:30
15 a.m. Class Members may attend the hearing via Zoom. Instructions are provided by the
16 Court at: <https://www.cand.uscourts.gov/judges/spero-joseph-c-jcs/>. Members of the class
17 may appear and present objections at the Final Approval/Fairness Hearing in person or by
18 counsel.

19 16. Plaintiff shall file a Motion for Final Approval no later than 14 days prior to the
20 hearing.

21 17. The Court expressly reserves the right to adjourn or to continue the Final
22 Approval/Fairness Hearing without further notice to class members, except that notice of a
23 continuance shall be provided to all class members who submit a proper objection.

24 18. IT IS FURTHER ORDERED that, if for any reason the Court does not grant final
25 approval of the Settlement, or the Settlement otherwise does not become effective in
26 accordance with the terms of the Stipulation, this Order shall be rendered null and void and
27 shall be vacated, and the Parties shall revert to their respective positions as of before entering
28 into the Stipulation and all evidence and proceedings held in connection with the Settlement
[REVISED PROPOSED] ORDER GRANTING MOTION FOR PRELIMINARY APPROVAL

1 shall be without prejudice to the status quo ante rights of the Parties to the Class Action as
2 more specifically set forth in the Settlement.

3 **IT IS SO ORDERED.**

4
5 Date: April 6, 2022

